COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its won motion as to the propriety of the rates and charges set forth in the tariff filings by Verizon – New England, Inc., d/b/a Verizon – Massachusetts	DTE 98-57, Phase III

REPLY COMMENTS OF AT&T

On April 18, 2002, the hearing officers in this docket issued a request for reply comments relating to the letter and public notice filed by Verizon on March 7, 2002, and the comments filed by Verizon, AT&T and Covad on April 9, 2002. AT&T files these reply comments pursuant to the hearing officers' request.

Introduction

In its April 9 comments, Verizon announced for the first time that it intends to offer an end-to-end, DSL-over-fiber, wholesale service to CLECs pursuant to federal tariff. Notwithstanding Verizon's intentions, they are irrelevant to this case. Verizon has an obligation to provide as an unbundled network element all the capabilities of a loop, even when the loop is fiber fed.

There is no legal authority, nor does Verizon point to any, that relieves Verizon of its obligations to unbundle the loop and its subparts merely because Verizon offers, pursuant to federal tariff, a service over the loop at wholesale. Accordingly, the Department should proceed with its existing investigation in this docket of the terms and conditions under which Verizon must provide as a UNE all loop capabilities, including DSL over fiber-fed loops.

Further, in view of Verizon's March 7, 2002, announcement that Verizon will deploy in its own network the technology that makes DSL over fiber possible, it is imperative that the Department act promptly to enure that a level competitive playing field develops. To this end, the Department must direct Verizon to provide fiber fed, DSL capable loops, and their subparts, to CLECs on an unbundled network element basis at TELRIC prices.

Comments

I. THE DEPARTMENT SHOULD REJECT VERIZON'S UNILATERAL DECISION THAT THE DEPARTMENT HAS NO JURISDICTION OVER ANY VERIZON DSL OVER FIBER OFFER.

Over a year ago, the Department unambiguously indicated that further information was required in this proceeding to determine whether "some or all of the plug and play options advocated by CLECs are reasonable or whether the Department should restrict Verizon's tariff offering to one type of deployment."[1] In its April 9, 2002 letter, Verizon asserted that the Department lacked jurisdiction to require Verizon to provide DSL over fiber and declined to file a tariff for the Department to review. Prior to the filing of its April 9 letter, Verizon had supported its position by drawing parallels to FCC decisions that discuss the issue of packet-switching and determined that such packet-switching does not need to be considered a UNE unless the four conditions of 47 CFR 51.319(c)(5) are met. Verizon relied principally on the failure of Condition 4 (deployment of packet switching) to be satisifed. Verizon further contended that since it has "not yet deployed the necessary facilities and support systems" to provide DSL over fiber, the Department had no authority to compel Verizon to offer DSL over fiber using a DSLAM at its remote terminals.

Verizon has not been forthright with the Department or the parties in this proceeding. At the same time that Verizon asserted that Department review was inappropriate, Verizon was

[1] DTE 98-57, Phase III (September 29, 2000) ("*Phase III Order*"), at 87

simultaneously planning to announce the deployment of NGDLC that makes DSL over fiber feasible. Throughout the proceeding, Verizon has refused to substantively respond to CLEC requests that Verizon disclose its scheduled plans to offer DSL over fiber. As late as January 8, 2002, one month before Verizon announced that it was deploying in Massachusetts the facilities and support systems necessary for DSL over fiber. Verizon filed a Reply Brief that implied that it had no current plans to deploy the necessary facililties and support systems. Verizon's efforts to dissuade the Department from completing this investigation and to delay disclosure to CLECs, regardless of motivation, have the practical effect of conferring upon Verizon a headstart over its competitors in the Commonwealth's market for retail DSL customers. The Department should not allow Verizon this competitive advantage. For the reasons set forth below, Verizon should be required to file an amended tariff immediately.

A. The Reasons Offered by Verizon In Its April 9 Letter To The Department For Not Filing A Tariff For The Provision of DSL Over Fiber As A UNE Are Without Merit.

As AT&T noted at the outset of these comments, the mere filing of a tariff of any sort at the FCC does not relieve Verizon of its unbundling obligations. Certainly, the reasons that Verizon offers in its April 9 letter for filing a wholesale tariff at the Federal level has nothing to do with its unbundling obligations. Verizon appears to rely on regulatory developments relating to ***retail*** service as justification for filing a wholesale service in lieu of unbundling.

In its April 9 letter, Verizon stated that its offering will be a packet-switching service used primarily for connection to the internet. Verizon then argued that FCC precedent mandates that such services be tariffed only at the federal level. Verizon's argument, however, is misplaced because the principles it discusses only relate to the provision of *retail* service, not to Verizon's obligation to provide unbundled network elements. Indeed, applying Verizon's argument to the world of UNEs would lead to an absurd result which contradicts the basic

tenants of Verizon's unbundling obligations. If Verizon's arguments were correct, then all loops, in particular the high-capacity portions of those loops, would be precluded from being unbundled and tariffed at the state level whenever those loops or loop portions were used to carry internet traffic. Verizon is not relieved of its obligation to provide loops as a UNE just because some of the services that a CLEC offers over the loop are tariffed at the federal level.

B. Verizon Has Not Met Its Burden Of Proving That DSL Over Fiber Is Not A UNE.

When the Department rejects, as it must, the irrelevant argument that Verizon makes in its April 9 letter, it is left with the same unbundling issue that it has faced throughout this proceeding.

The standard for determining whether the Department must require unbundling under federal law is set forth in 47 CFR 51.317. Under that section, part of the Department's review must include a determination of whether the failure to require unbundling would impair or diminish a carrier's ability to provide service. Under 47 CFR 51.319(c)(5), the FCC specifies four conditions that must be found in order to conclude that failure to unbundle packet switching would impair or diminish a carrier's ability to provide service. Verizon errs in contending that the four conditions of 47 CFR 51.319(c)(5) have not been met and further errs in contending that DSL over fiber involves packet-switching. Moreover, Verizon errs in failing to acknowledge the independent authority of the Department under state law to require Verizon to provide DSL over fiber as a UNE.

1. The Conditions In 47 CFR 51.319(c)(5) Are Met And Verizon Should Be Required To Tariff the CLEC-Provided Line Card Option As UNEs Under Federal Law.

As a matter of Federal law, the standard for determining whether the Department must require unbundling under federal law is set forth in 47 CFR 51.317. Under that section, part of the Department's review must include a determination of whether the element is necessary or

there are functional alternatives from providers other than Verizon as well as whether the failure to require unbundling would impair or diminish a carrier's ability to provide service. The Department may also consider additional factors, such things as whether competition is promoted, regulation is reduced, and certainty as to the availability of network elements is promoted. 47 CFR 51.319(c)(3).

Furthermore, under 47 CFR 51.319(c)(5), the FCC specifies four conditions that must be found in order to conclude that failure to unbundle packet switching would impair or diminish a carrier's ability to provide service. If the four conditions set forth in 47 CFR 51.319(c)(5) are met in *any* of Verizon central office (CO) or remote terminal (RT) where Verizon will be providing DSL over fiber, Verizon will be required to unbundle its network at the remote terminal location. Specifically, the regulation states:

> (5) An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching capability only where each of the following conditions are satisfied. The requirements in this section relating to packet switching are not effective until May 17, 2000.
>
> (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);
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> (ii) There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer;
>
> (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access multiplexer (DSLAM) in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and
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> (iv) The incumbent LEC has deployed packet switching capability for its own use.[2]

[2] 47 CFR 51.319(c)(5).

Throughout this case, there has been no real dispute that where a CLEC requests a fiber fed loop that is DSL capable from Verizon, the first two of the above conditions would be met.[3] Throughout this proceeding, Verizon has relied only on the latter two conditions as grounds for its claim that it is not subject to an unbundling obligation. Verizon's recent announcement that this year it will deploy "packet switching"[4] capability for its own use at remote terminals "in at least one location in Massachusetts"[5] satisfies the fourth condition.

The third condition, requires a demonstration that the CLEC has not been permitted to physically or virtually collocate its DSLAM at the remote terminal. However, the FCC clearly states that "The incumbent will be *relieved of this unbundling obligation only if* it permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal, on *the same terms and conditions that apply to its own DSLAM."* The FCC goes on to say that if the CLEC cannot install its DSLAM in the remote terminal *"or*, obtain spare copper loops necessary to offer the same level of quality for advanced services," then CLECs are impaired without access to unbundled packet switching.[6]

In Massachusetts, although the FCC provides an either or option to be satisfied to establish impairment, CLECs are certainly impaired because they satisfy both, not just one prong of the FCC impairment test. CLECs will not be able to collocate at the Verizon remote terminal (1) due to space constraints, (2) because Verizon refuses to permit CLECs to collocate their line cards and not Verizon-specified line cards, (3) even if there were spare copper loops available

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[3] Ex. VZ-MA 10, VZ Direct at 13; Ex. VZ-MA 11, VZ Rebuttal, at 2-5.

[4] The FCC is currently considering the issue of whether NGDLC technology (which permits DSL over fiber) in fact involves "packet switching." *See*, Section I.A.2, below.

[5] *See* April 9, 2002, Letter from Verizon to Mary Cottrell at 1.

[6] In The Matter Of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, Third Report And Order, FCC 99-238 (released November 5, 1999) ("UNE Remand Order"), at Section 313

they would not provide the same level of quality that Verizon will enjoy and (4) according to Verizon, spare copper loops will not be available at the remote terminal at all.

a. CLECs Cannot Collocate DSLAMs At The Remote Terminal And, In The Absence of Plug and Play, Cannot Collocate Line Cards At The Remote Terminal.

In order to collocate, a CLEC would have to engage in construction[7] and must be able to install its own DSLAM at (or near) an ILECs remote terminal as well as have access to:

- a physical location where it can deploy its equiment;
- sufficient power to run heat, ventilation and possibly provide air conditioning for the equipment; and
- an efficient way to connect and modify cross connections of its equipment which includes the copper paiir on the customer's side of the remote terminal and fiber feeder facilities back to the central office.

In fact, Verizon has admitted in its recent FCC filing that "Remote terminals are space-constrained and are not designed to permit collocation of third-party equipment."[8] Therefore, while it may be possible for one or two CLECs to collocate in the Verizon remote terminal in certain situations, in the vast majority of situations, most – and in most cases, all – CLECs will be excluded from collocating within the remote terminal enclosure. The impact of this situation, *i.e.*, the presence of multiple requesting carriers seeking to collocate at the remote terminal, is a factor that the FCC recognized early on as indicative that competitors may be impaired in their

[7] Ordinarily, a CLEC must connect to a customer's sub-loop at the Serving Area Interface (SAI) to take traffick back to the CLEC network. It is even more difficult to collocate at the SAI than at the remote terminal. The SAI cannot accommodate additional equipment or power and HVAC for the collocation equipmnt. Even assuming that rights-of-way, capital, and time to provision the facilities could be attained, each of which has its own constraints, it is still not commercially feasible to deploy in an SAI that would serve only a limited number of customers. Another factor that renders collocating in the SAI uneconomic is the expense associated with all the facilities necessary to route traffic between multiple remote terminals and SAIs.

[8] CC Docket No. 01-338, 96-98, 98-147, Triennial Review, Comments and Contingent Petition for Forbearance of the Verizon Telephone Companies, April 5, 2002, at 92.

ability to offer service without access to incumbent LEC facilities.[9] However, taken in the context of the market as it has evolved, CLECs are definitely impaired without access to Verizon's network on a UNE basis since there is no alternative to the collocation of line cards at remote terminals equipped with NGDLC available to CLECs that provides parity of service with Verizon.

Furthermore, in a situation similar to the Massachusetts Plug and Play Option, the Illinois Commission cites to its support of a Texas Commission order. The Texas Commission found that because CLECs were not permitted to own and collocate their own line cards at the remote terminals, the Commission concluded that SBC did not permit CLECs to collocate at the remote terminals on the same terms and conditions as SBC.[10]

b. Copper Loops Are Not Available.

The FCC has also recognized that all copper loops are not an alternativeto and do not provide the same quality as service provided over shorter loop lengths in conjunction with remotely deployed fiber fed loop electronics.[11] The longer copper loop lengths provide inferior service, i.e, transmission degradation, they may not work with DSL transmission technology such as ADSL, they are not universally or ubiquitously available and may ultimately be retired from use for the vast majority of customers. This is in stark contrast to the next generation digital loop carrier deployment that overcomes the loop length issues associated with copper

[9] In The Matter Of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, Third Report And Order, FCC 99-238 (released November 5, 1999) ("UNE Remand Order"), at Section 306.

[10] Case 00-0393, Illinois Commerce Commission, September 26, 2001, at 25. Arbitration Award, Petition of IP Communications/Petition of Covad Commuunications and Rhythm Links, Inc., Texas PUC Docket Nos. 22168/22469, at 72, 77-8.

[11] In The Matter Of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, Third Report And Order, FCC 99-238 (released November 5, 1999) ("UNE Remand Order"), at Section 313.

loops because the lengths are shortened so that DSL technology can be employed to expand the transmission capacity available. In certain new areas, there are no copper loops and the NGDLC is the only architecture available. To put in perspective the impact of the digital loop technology deployment on competition, one need only look at the output of the FCC Synthesis Model. Based upon the FCC Synthesis Model projections,[12] there should be 2,894,428 residence lines in Massachusetts and of that number 1,056,753 should be on digital loop carrier (DLC) technology. This equates to 37% of total residence lines that would be unaddressable by CLECs if CLECs cannot obtain access to customers served by DLC technology. In the business segment of Massachusetts, the FCC Synthesis model projections indicate that there should be 1,517,202 total business lines and of those 439,947 are DLC. This equates to 29% of the business market that would be excluded from competition if Verizon were not required to provide as an unbundled network element fiber fed loops that are DSL capable. Overall, the FCC Synthesis Model results indicate that CLECs could be precluded from serving 33% of the total Massachusetts market, i.e., residence and business. However, the FCC Synthesis Model figures are generated based upon distance criteria. Other customers will be on DLC for reasons such as revenue generation, e.g., to make certain services available, or in urban areas where there is insufficient conduit place. Therefore, these numbers represent the lower bound of the projected unaddressable market in Massachusetts. The potentially unaddressable market for CLECs could be substantially larger.

Further exacerbating the situation is the fact that the segment of the consumer market left on copper will continue to diminish. As Verizon continues to deploy DLC architecture, the addressable market for CLECs will continue to constrict. This is a phenomenon that is not

[12] The current model has information as of January 1, 1999, which includes data through 1998. See Website: www.fcc.gov/ccb/apd/hcpm

unique to Verizon. As noted by the Illinois Commerce Commission as a basis for its decision to unbundle Ameritech's Project Pronto, in the Ameritech areas served by fiber-fed DLC, spare copper loops connecting the remote terminal with the central office are typically unavailable.[13] .

For all the reasons stated above, the Department should exercise the authority conferred by the FCC on state commissions to unbundled under federal law,[14] especially in light of the overwhelming evidence that the conditions required by the FCC have been demonstrated. In making its decision, the Department should consider that the FCC does not give particular weight to any of the factors that it identifies or that all factors must be met, but instead seeks a determination as to "whether the sum total of the effect of the factors requires a finding that the element must be unbundled."[15]

2. Although Verizon Relies On The Fact That The Current FCC Regulations Classify The DSLAM As Performing Packet Switching, The FCC Has Since Acknowledged That A DSLAM Does Not Actually Perform Packet Switching Functions.

The FCC's definition of local loops is simply that they are a transmission pathway that includes all "attached electronics" to the loop, except for those used to provide advanced services, such as DSLAMs. However, the exclusion of the DSLAM as part of the local loop is based on a mistaken assumption that the DSLAM performs packet switching, a fact that the FCC has recognized in other proceedings.[16] There is, indeed, no factual basis to conclude that any

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[13] Case 00-03393, Illinois Commerce Commission, Order On Rehearing, September 26, 2001, at 28.

[14] In The Matter Of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, Third Report And Order, FCC 99-238 (released November 5, 1999) ("UNE Remand Order"), at Section 312.

[15] In The Matter Of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, Third Report And Order, FCC 99-238 (released November 5, 1999) ("UNE Remand Order"), at Section 106.

[16] For example, in the *UNE Remand Order*, the Commission found that packet switching involves the "routing [of] individual data units based on address or other routing information . . . ." *UNE Remand Order* ¶ 302.

(continued…)

DLC system, including NGDLC, performs any switching functions. What DLC systems do is convert analog to digital signals, perform concentration functions, multiplex a number of signals onto a single facility and may perform protocol conversion and buffering functions in order to forward telecommunications signals through a carrier's network, contingent upon the network architecture employed. A particular DLC architecture may limit transmission capacity or provide the full transmission capacity of the facility. The only real distinction is the efficiencies achieved on the transmission medium used. The transmission medium can be NGDLC with its functions, features and capabilities as well as copper facilities, fiber feeder and the associated electronics at the points between the customer's premise and Verizon's central office, all of which are part of the definition of the local loop.

Switching does, however, occur where the physical path between two points varies each time the two points are connected. However, in the case of the DSLAM, once the transmission from the customer premise is split into high and low frequency components (i.e., packets), the DSLAM accepts the packets and efficiently places the packets onto a feeder facility. There is only one physical route that the DSLAM uses versus an ever-changing route when switching is performed. Indeed, the FCC has recognized that DSLAMs actually perform multiplexing and related "electronic" functions.[17] Accordingly, once the FCC completes its review and issues its order in the Triennial Review, the conditions applicable to DSLAMs that are specified in 47 CFR 51.319(c)(5) will be eliminated.

(..continued)
Despite this definition, however, it mistakenly classified the DSLAM as part of the packet switching network element rather than the loop element. *Id.* ¶ 303.

[17] *See, e.g., Project Pronto Waiver Order* ¶ 15 ("DSLAMs often perform a spectrum splitting function in addition to their *primary multiplexing functionality*") (citation omitted) (emphasis added); *Broadband Notice* ¶ 11 n.19 (DSLAMs are "electronics" that "synchronize end user addresses with telephone company equipment and also separate" the low and high frequency signals).

3. Neither Verizon's Filing of a Federal Tariff Providing a Wholesale, End-To-End DSL Service Over Fiber, Nor A Determination That The FCC's Four Conditions Have Not Been Satisfied, Precludes The Department From Requiring Verizon To Provide DSL Over Fiber As An Unbundled Network Element Under State Law.

The Department has independent authority, under state law, to require Verizon to provide fiber-fed loops that are DSL capable to competing carriers any place where such loops are deployed in Verizon's network for Verizon's own use. There is no doubt that the Department has such authority. Indeed, the Department's authority to require Verizon to provide the "piece parts" of its network to competitors for purposes of promoting local competition was the predicate for the Department's Local Competition docket undertaken prior to the enactment of the Telecommunications Act of 1996.[18] Nor does federal law preclude a state from exercising its independent authority to require the provision of unbundled network elements. [19]

Thus, the Department should exercise its authority under state law to ensure that Verizon does not leverage its monopoly over the loop into the market for broadband services. In the absence of an unbundling requirement, no other carrier would have access to the underlying loop and connectivity to the customer's premises on the same terms and conditions that Verizon does. Verizon would be able to use the loop to generate the substantial revenues available from broadband services, while CLECs would incur the same cost for the loop but would not be able to offer the same services. Moreover, Verizon's ability to offer broadband services bundled

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[18] *See, e.g., Local Competition*, D.P.U. 94-185 (June 4, 1996) (Interlocutory Order On Appeals Of AT&T And NECTA), at 1, n. 1 (noting the removal of "unbundling and pricing of NYNEX network elements" from the docket only after the Telecommunications Act of 1996 provided federal authority for such purposes).

[19] *In re Petition of Verizon New England, Inc.*, ___ Vt. ___, ___ A.2d ___, Docket No. 2000-118, slip. op. at 7 (Feb. 22, 2002), at 4 (affirming determinations by the Vermont Public Service Board "on the ground that irrespective of federal law, state law authorizes the board to issue the challenged orders" requiring access to UNEs). An advance copy of the opinion is available at: < gopher://dol.state.vt.us/0R0-39516-gopher_root3:%5Bsupct.current%5D2000-118.op;1 >.

together with voice telephony would make it impossible for CLECs that can use the loop only for telephony to compete.

For all the important policy considerations that the Department contemplated when it required Verizon to file a plug and play tariff, the Department should complete its investigation and order Verizon to provide DSL over fiber as an unbundled network element under state law.

C. Verizon Is Already Treating DSL Over Fiber As A UNE For Purposes Of Cost Recovery.

In D.T.E. 01-20, Verizon has proposed to recover certain costs stemming from OSS upgrades as non-recurring rates ("NRCs"), including the cost of ordering and provisioning DSL over fiber as a UNE. Verizon's position in D.T.E. 01-20 is an admission that DSL over fiber is a UNE and should be priced and tariffed accordingly. This position cannot be squared with the position Verizon is taking in the instant proceeding.

In response to RR-DTE 50 in Docket 01-20, Verizon stated that it was entitled to recover through OSS rates, systems costs for making line sharing, line splitting and sub-loop unbundling UNEs available.[20] As support for the costs that it intends to recover through its NRCs, Verizon pointed to a document that describes work performed for Verizon in early 2001 to enhance OSSs that permit CLECs to order DSL capable loops.[21] Notably, the work described was not limited to enhancements that would allow Verizon to provide DSL over copper. The work included OSS enhancements necessary for providing DSL over a fiber loop, *i.e.*, ADSL.[22] In other words, Verizon seeks to recover from all users of line sharing, line splitting and subloop unbundling its OSS costs for developing systems to permit CLECs to order DSL over a fiber loop.

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[20] MA 01-20, RR-DTE 50.

[21] RR-DTE 50, Attachment H.

[22] RR-DTE 50, Attachment H.

Despite the fact that Verizon claims in this docket that DSL over fiber is not a UNE, in D.T.E. 01-20, Verizon includes and attempts to recover the OSS costs associated with a DSL over fiber offering. Verizon seeks to pass those costs onto DLECs and CLECs that order line sharing or line splitting UNES over copper loops. The practical result of the inclusion of these costs is that every time a CLEC or DLEC orders a line sharing or line splitting UNE, a portion of what they are paying for is the development of OSSs to provision DSL services over fiber. Such treatment of the recovery of these expenses clearly demonstrates that, for purposes of cost recovery, Verizon treats the provision of DSL over fiber as a UNE. This is patently contradictory to the position that Verizon has asserted in its April 9, 2002 letter – that DSL over fiber is *not* a UNE.[23]

Furthermore, Verizon claims in this proceeding that there are additional OSS costs that it will incur and would like to recover. Verizon states that although it has started to develop OSSs to handle its PARTS service, the development work is not complete. "The extensive OSS moditification would include changes to Verizon-MA's order entry systems, provisioning systems, maintenance and repair systems, surveillance and fault management systems, inventory management systems, billing systems and engineering and planning tools."[24] Yet according to Verizon in its comments in the FCC's Triennial Review, "These functions overlay all services provided by a carrier and represent the basic functions of running a business." Verizon must be required to explain the extent to which the OSS costs for PARTS are wholesale costs versus retail costs, before any cost recovery can be approved. Finally, there are critical questions as to how the costs Verizon is seeking to recover in D.T.E. 01-20 relate to the costs it is claiming here

[23] *See* April 9, 2002, Letter from Verizon to Mary Cottrell at ___.

[24] DTE 98-57, Phase III, Initial Brief of Verizon Massachusetts, December 18, 2001, at 19.

for the same functionality, *i.e*, providing DSL over fiber to its wholesale customers,[25] and whether these claims will result in double-recovery.

It is hypocritical for Verizon to recover its OSS costs by treating DSL over fiber as a UNE in one docket, while at the same time arguing in this docket that DSL over fiber is not a UNE, and that the Department has no jurisdiction to require Verizon to file a state tariff for the offering.. Clearly, the Department should not accept Verizon's baseless claims that DSL over fiber is not a UNE nor should the Department accept Verizon's unsupported conclusion that the Department lacks all jurisdiction over these arrangements.

II. THE DEPARTMENT SHOULD MODIFY THE VERIZON TARIFF TO INCLUDE THE PLUG AND PLAY UNE OFFER WITH THE OPTION FOR THE CLEC TO PROVIDE THE LINE CARD OR, AT THE CLEC'S OPTION FOR VERIZON TO PROVIDE THE LINE CARD, AS WELL AS MODIFY THE VERIZON PROPOSED PARTS SERVICE OFFER.

The April 9th Verizon filing must be considered within the context of the Department's prior rulings on Verizon's wholesale obligations for DSL. The Department ordered Verizon to file an illustrative tariff for Plug and Play in its September 29, 2000 Order. After months of Verizon foot dragging reflected in a motion for permission to file only a PARTS (*i.e.* wholesale) service, the Department denied Verizon's motion and again directed Verizon to file a tariff for Plug and Play, in addition to the PARTS tariff if it so chose. Verizon requested additional time to file the Plug and Play tariff because it asserted that it needed to design the offer, assess demand, and prepare a business plan. On March 7, 2002 when Verizon filed a notice that it is deploying loop facilities that will support DSL over fiber, Verizon continued to ignore the Department's order that Verizon file a tariff offering such facilities on an unbundled basis, i.e., "Plug and Play."

[25] It is not at all clear why Verizon should be entitled to any cost recovery for the provision of DSL over fiber as a wholesale, PARTS-like service when no CLEC has requested it on that basis.

Contrary to Verizon's assertions, the Department does have jurisdiction to determine whether DSL over fiber should be considered as a UNE. AT&T therefore offers the following specific recommendations to expeditiously tariff approval and implementation.

?? Attached to these comments as Appendix A is AT&T's proposed tariff. Appendix A represents an illustrative tariff for the Plug and Play UNE Option. While the proposed language does not resolve all of the issues (such as the number of CLEC slots available at a remote terminal), the tariff (1) permits a CLEC to place its line cards at the DSLAM in the remote terminal, (2) permits a physical or virtual arrangement, (3) provides for upgrades to faster speeds as anticipated, (4) currently offers ADSL, subject to any additional types proposed by CLECs as cards become available and, (5) permits service to be expanded to different areas at the CLECs' request.

?? The Department should require Verizon to immediately file a list of the locations in which it has deployed Alcatel Litespan Remote Terminals since March 2001 since all of these remote terminals will be pre-configured for the DSL capability.[26] In addition, Verizon should be required to file with the Department a list of the location of all its current and planned remote terminals as well as its planned schedule of deployment for the Alcatel Litespan Remote Terminals over the next three years. This will provide the Department with critical information on the extent to which broadband competition will be undercut if Verizon continues to refuse to file a "plug and play" tariff. It will also prevent future surprises from Verizon.

[26] DTE 98-57, Phase III, Initial Brief of Verizon Massachusetts, December 18, 2001, at 18.

?? Verizon has informed CLECs that it is willing to negotiate a business relationship with CLECs when the customer chooses to have the CLEC provide the voice service and Verizon provide data service. To effectuate the timely implementation of Verizon's stated intent, the Department should require Verizon to include in its tariff the terms and conditions under which Verizon will partner with CLECs when the customer chooses to have a CLEC for voice and Verizon for data. In this way, Verizon cannot use its data service to maintain its monopoly on local voice nor unduly delay implementation of the CLEC/Verizon working relationship with the CLEC.

?? The Department should require Verizon to implement tariff language specifying that CLECs can obtain line cards from Alcatel or its licensed manufacturers for use in the Verizon DSLAM. This provision is consistent with the CLECs desire to differentiate its offer beyond what Verizon may choose to provide. It also addresses Verizon's concerns about protecting the network, since Alcatel and its licensees would not wish to jeapardize business with Verizon by recommending/providing line cards that would be detrimental to the Verizon infrastructure.

?? The Department should also require Verizon to implement tariff language that permits CLECs or Verizon, at the CLEC option, to perform the functions associated with work on the CLEC line cards at the remote terminals, since CLEC technicians are able to handle such functions. The Department should also

eliminate Verizon's requirement that CLECs must have a Verizon escort[27] before being permitted to perform any necessary installation or maintenance associated with the CLEC line cards.

The goal in Massachusetts is consumer choice through competition. These recommendations provide a framework for the Parties to move forward so that CLECs can provide DSL over fiber loops as soon as practicable and, thereby, increase consumers' choices. The Department should take into account the concerns and proposed solutions contained in these recommendations as well as the length of time already devoted to this product assessment and tariff process, and take action to complete this phase as soon as possible so that CLECs can, in fact, enter the market at the same time as Verizon or its data affiliate.

Conclusion

The letter filed by Verizon on April 9, 2002 announced that it will file a tariff at the FCC for its PARTS service. Verizon files tariffs with the FCC as a matter of course in its day-to-day business. Verizon's announcement and explanation of its FCC filing in no way disposes of the issues before the Department in this case.

As indicated in these Reply Comments, the Department has ample state and federal jurisdiction to decide the issue of what is an unbundled network element for purposes of tariffing the elements in the Commonwealth of Massachusetts. In fact, the Department has spent significant time and resources exercising its authority to determine which network elements must be unbundled, and there has been no intervening event to change the Department's responsibility for continuing to make such determinations. The Department is urged to expeditiously complete its work in that regard in the instant case.

[27] DTE 98-57, Department Order (Phase I-B), May 24, 2001, at 20. The Department refused to permit Verizon's security escort requirement because it did not comply with the FCC's collocation rule concerning security escorts.

Respectfully submitted,

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